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**Robinson's Ambulance & Oxygen Service, Inc. and
Local 810, International Brotherhood of Team-
sters, AFL-CIO. Case 29-CA-19826**

June 17, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed on February 26, 1996,¹ the General Counsel of the National Labor Relations Board issued a complaint on April 11, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 29-RC-8502. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting an affirmative defense.

On May 14, 1996, the General Counsel filed a Motion for Summary Judgment. On May 16, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objection to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable

¹ Although the Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to whether the charge was filed and served on the Respondent on February 26 and 27, 1996, respectively, a copy of the charge and postal return receipt are attached to the General Counsel's motion and the Respondent has not challenged the authenticity of those documents in response to the Notice to Show Cause.

in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation, with its principal office and place of business located at 664 Bluepoint Road, Holtsville, New York (the Holtsville facility), and a place of business located at 20 John Street, Amityville, New York (the Amityville facility), has been engaged in providing ambulance and transportation services. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, purchased and received at its Holtsville and Amityville locations goods, supplies, and materials valued in excess of \$50,000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.²

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held August 25, 1995, the Union was certified on February 7, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time ambulance and ambulette drivers, paramedics, technicians and certified nurses' aides employed by Respondent at and out of its Holtsville and Amityville facilities, but excluding all dispatchers, professional employees, guards and supervisors as defined in Section 2(11) of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About February 12, 1996, the Union requested the Respondent to bargain, and, since February 15, 1996,

² The Respondent's answer to the complaint denies having knowledge or information sufficient to form a belief as to whether the Union is a labor organization. However, by entering into a Stipulated Election Agreement in the representation proceeding, the Respondent effectively agreed that the Union is a labor organization. At no time during the representation proceeding did the Respondent question the Union's status as a 2(5) labor organization. Its failure to raise this issue in the underlying representation proceeding precludes the Respondent from litigating the matter in this proceeding. *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn. 1 (1992).

the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 15, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Robinson's Ambulance & Oxygen Service, Inc., Holtsville and Amityville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 810, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time ambulance and ambulette drivers, paramedics, technicians and certified nurses' aides employed by Respondent at and out of its Holtsville and Amityville facilities, but excluding all dispatchers, professional em-

ployees, guards and supervisors as defined in Section 2(11) of the Act.

(b) Within 14 days after service by the Region, post at its facilities in Holtsville and Amityville, New York, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 26, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 17, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 810, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time ambulance and ambulette drivers, paramedics, technicians and certified nurses' aides employed by us at and out of our Holtsville and Amityville facilities, but excluding all dispatchers, professional employees, guards and supervisors as defined in Section 2(11) of the Act.

ROBINSON'S AMBULANCE & OXYGEN
SERVICE, INC.